

## **COUNTY OF FAIRFAX, VIRGINIA**

### **SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS**

SAMRAT M. AMIN & FARZANA AKKAS, SP 2015-MV-024 Appl. under Sect(s). 8-918 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 7815 Cliffside Ct., Springfield, 22153,, on approx. 9,197 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 98-2 ((6)) 351. Mr. Byers moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 23, 2015; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the property.
2. The present zoning is R-3 cluster.
3. The lot area is 9,197 square feet.
4. This has happened many times before, where owners have put appliances into the basement and sell the home, and then there is an unsuspecting homeowner that comes in and purchases it and thinks that, in fact, that they can have what we would call an accessory dwelling unit.
5. That scenario would only be relevant absent some of the actions that have been taken by this applicant.
6. What was deeply concerning to the Board was that after formal notification, in writing at least on two to three different occasions, this applicant continued to not comply with the Zoning Ordinance.
7. The Board wants to bring people into compliance, but want them to cooperate with them.
8. The Board did not agree with the statement as submitted by the applicant that he has been fully cooperative, and there has been nothing to circumvent the Zoning Ordinance, at least not on the record before the Board.
9. In addition to that, there are actually other violations on the property.
10. The unit was in place when the property was purchased, however, there are no existing permits for this accessory dwelling unit.
11. On June 10, 2014, a Notice of Violation (NOV) was issued to the applicant after an inspection revealed that the basement contained an accessory dwelling unit and the property contained multiple occupants. In response to the NOV, the applicant submitted this special permit application to permit the accessory dwelling unit to remain. The illegal tenants in the accessory dwelling unit were required to vacate the property.
12. During review of this application, staff conducted a site visit with the Department of Code Compliance on March 13, 2015. During this visit, staff noted that the accessory dwelling unit was still being rented to tenants in violation of the NOV. Staff noted food in the refrigerator, dishes in the sink, used towels, and other items in the bathroom, and a number of clothing and shoes in the bedrooms.

13. The applicant was asked to rectify the situation before the application could proceed further. The applicant indicated they would comply with the requirements of the Ordinance.
14. On April 15, 2015, staff completed a re-inspection of the accessory dwelling unit. Upon inspection, it appeared that the accessory dwelling unit was no longer occupied; however staff did note a number of perishable food items in the refrigerator. At least on this inspection, the clothing was removed and advance notice was given of this inspection. At that time, staff reminded the applicant once again that this accessory dwelling unit must remain unoccupied until action is taken on the special permit and reminded the applicant that only those meeting the eligibility requirements in the Ordinance can occupy this unit in the event it is approved.
15. On April 21, 2015, staff from the Department of Code Compliance visited the property in response to an anonymous complaint regarding multiple occupants. At that time, staff visually witnessed a woman and two small children arriving at the site and entering the accessory dwelling unit through the rear of the house via the accessory dwelling unit. Upon speaking with the adult, DCC learned that a family unrelated to the owners/applicant had been living in the accessory dwelling unit since September 2014.
16. From the standpoint of having relatives who are over the age of 55 living in this, the Board was presented with the fact that applicant's father-in-law, who is over the age of 55, would reside in the ADU, perhaps in the future, but the Board was given no specific timeframe for that. The applicant's father-in-law and his wife would live in the ADU only approximately six months of the year.

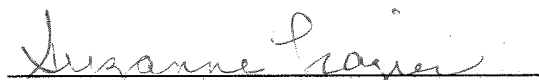
AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Ms. Theodore seconded the motion, which carried by a vote of 3-3. Chairman Ribble, Mr. Hart, and Mr. Beard were voted against the motion. Mr. Smith was absent from the meeting.

A Copy Teste:

  
Suzanne Frazier, Deputy Clerk  
Board of Zoning Appeals